IN THE

Supreme Court of the United States

OCTOBER TERM 1978

No. 78-1414

STATE OF MINNESOTA,

Petitioner,

vs.

ROBERT ANDREWS,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

JOHN R. CRONNELLY
[illegible]
[illegible]
[illegible]

INDEX

	PAGE
Opinion Below	2
Constitutional and Statutory Provisions Involved	2
Statement of the Case	3
Reason for Denying Grant of Writ of Certiorari	2
Conclusion	4
Appendix:	
Minn. Stat. 611.11	A-1

CASES CITED

	PAGE
Conington v. Commonwealth of Kentucky, 173 U.S. 231, 19 S. Ct. 383, 43 L. Ed. 679 (1899)	3
Groppi v. Wisconsin, 400 U.S. 505, 91 S. Ct. 490, 27 L. Ed. 2d 571 (1971)	3
Murdock v. Mayor of Memphis, 87 U.S. (20 Wall.) 590, 22 L. Ed. 441 (1875)	3

IN THE

Supreme Court of the United States

OCTOBER TERM 1974

No. .....

STATE OF MINNESOTA,

Petitioner,

vs.

ROBERT ANDREWS,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

OPINION BELOW

The opinion of the Supreme Court of Minnesota is reported in 212 N.W. 2d 863 (Minn. 1973).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Minn. Const. Art. 1, § 7
Minn. Stat. 169.121
Minn. Stat. 611.11

STATEMENT OF THE CASE

Respondent accepts Petitioner's statement of the case noting particularly therein that Respondent at the trial court level raised no Federal Constitutional question (pp. 3-4, Petitioner's Brief) and further noting that Respondent's Brief before the Supreme Court of Minnesota raised no Federal Constitutional question; Respondent has relied solely upon State statutory and constitution grounds (p. 11, Defendant-Appellant's Brief to the Supreme Court of Minnesota).

REASON FOR DENYING GRANT OF WRIT OF CERTIORARI

The basic complaint apparent in the application for Writ of Certiorari is that the State disagrees with the Minnesota Supreme Court's interpretation of two state statutes, M.S. 169.121 and M.S. 611.11. The Court ruled that the legislature had not expressed an intention to make testimony regarding defendant's refusal to submit to the taking of specimens for chemical analysis admissible at trial. *State v. Andrews*, 212

N.W. 2d 863, 865 (Minn. 1973). The Court further ruled that admissions to evidence of such refusal constituted prejudicial error. *State v. Andrews*, at 864. This holding was predicated on the fact that M.S. 169.121 makes submission to chemical testing a voluntary act on the part of citizens of the State of Minnesota and further predicated on M.S. 611.11 which forbids a prosecuting attorney from alluding to the defendant's failure to testify. Standing alone, this holding constitutes an adequate and independent State ground for the Minnesota Court's decision, requiring a denial of the Writ. Rule 19(a), Rules of the Supreme Court of the United States. Moreover, this Court must accept the construction given a State statute by the State's highest court. *Groppi v. Wisconsin*, 400 U.S. 505, 91 S. Ct. 490, 27 L. Ed. 2d (197).

A second basis for the Minnesota Court's ruling rested upon Minn. Const. Art. 1, § 7, which reads in part:

> "No person shall be . . . compelled in any criminal case to be a witness against himself."

This provision, virtually identical to U.S. Const. Amend. V, has been construed by the highest court of the State of Minnesota to protect the citizens of Minnesota in the circumstances of the instant case. Principles of Comity and Federalism demand that a State construction of its Constitution and statutes are binding upon Federal Courts unless they conflict or impair the efficacy of some principle of the Constitution of the United States. *Covington v. Commonwealth of Kentucky*, 173 U.S. 231, 19 S. Ct. 383, 43 L. Ed.—— (1899); *Murdock v. Mayor of Memphis*, 87 U.S. (20 Wall) 590, 22 L. Ed. 429, 441 (1875). No such impairment exists here. If the Constitution and laws of Minnesota, as authoritatively construed by the highest court of this State protect a person in this state from the prejudicial effects of the introduction of certain compelled

testimony, as defined by this state, beyond what the Federal Constitution or that of any other state might require the United States Supreme Court cannot, ought not, and traditionally has not intervened in such cases. Since both Minnesota Const. Art. 1, § 7, and U.S. Const. Amend. V through Amend. XIV, protect persons from State actions, the Minnesota Court is free to extend greater protection in this regard without deciding or raising a Federal Constitutional question.

Although not resting solely on this ground, the Minnesota Court noted the limited applicability of *Schmerber v. California*, 384 U.S. 757 (1966), in determining the question before it in the instant case. Petitioner's Brief for grant of Writ of Certiorari deals extensively with the merits of the Minnesota Court's determination of the issue regarding the testimonial or non-testimonial nature of such evidence. It is submitted that not only does the Minnesota Court's opinion per Kelly, J., adequately dispose of that question (212 N.W. 2d 863, 864) for State Constitutional and statutory purposes, but also that such question is not of a substantial federal nature as to require this Court to pass upon it.

CONCLUSION

It is submitted that the decision in *State v. Andrews* is adequately supported on State Constitutional and statutory grounds and further that the State's application for Writ of Certiorari must be denied for want of a substantial federal question.

Respectfully submitted,

JOHN S. CONNOLLY
Attorney for Respondent
100 McColl Building
St. Paul, Minnesota 55101

APPENDIX

611.11 No presumption from failure to testify

The defendant in the trial of an indictment, complaint, or other criminal proceeding shall, at his own request and not otherwise, be allowed to testify; but his failure to testify shall not create any presumption against him, nor shall it be alluded to by the prosecuting attorney or by the court.